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**OFFICE OF PETITIONS**

In re Application of : DECISION ON APPLICATION  
Becher et al. : FOR  
Application No. 09/652,771 : PATENT TERM ADJUSTMENT  
Filed: August 31, 2000 :  
Atty Docket No. 39-21(3779)B 6692.1:

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT PURSUANT TO 37 CFR §1.705," filed August 16, 2004. Applicants request that the initial determination of patent term adjustment under 35 U.S.C. 154(b) of zero (0) days be corrected to include an applicant delay of 148 days, instead of 167 days. Applicants further request reconsideration on the basis that the Office has failed to issue a patent within 3-years of the actual filing date of the application.

To the extent that the instant application for patent term adjustment requests reconsideration of the patent term adjustment at the time of the mailing of the notice of allowance as it relates to the Office's failure to issue the patent within 3 years of the filing date, a decision is being **held in abeyance** until after the actual patent date. Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term patentee is entitled to for Office failure to issue the patent within 3 years. See § 1.703(b).

Patentees are given **TWO (2) MONTHS** from the issue date of the patent to file a written request for reconsideration of the patent term adjustment for Office failure to issue the patent within 3 years. A copy of this decision should accompany the request. Patentees may seek such consideration without payment of an additional fee. However, as to all other bases for seeking reconsideration of the patent term adjustment indicated in the patent, all requirements of § 1.705(d) must be met. Requests for reconsideration on other bases must be timely filed and must include payment of the required fee.

As to the application for patent term adjustment at the time of mailing of the notice of allowance, this request is **GRANTED** to the extent indicated herein.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the notice of allowance is zero (0) days,

including a period of applicant delay of 188 days. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On May 20, 2004, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment (PTA) to date is 0 days. On August 16, 2004, the instant request for reconsideration was timely filed<sup>1</sup>. Applicants agree with the Office's determination of zero days of Office delay. Applicants also agree with the reductions of 61 and 20 days for applicants' late filing of responses pursuant to § 1.704(b).

However, applicants dispute the reduction of 86 days for late filing of a response to the Notice to File Missing Parts of Application mailed October 16, 2000. Applicants state that their response was filed on February 1, 2001. Thus, the period of delay should be 16 days. In support thereof, applicants provide a copy of their itemized and date-stamped return postcard. Further, applicants acknowledge that an additional period of reduction for filing of an amendment under § 1.312 should be entered in this application.

Applicants state that the patent issuing from this application is not subject to a terminal disclaimer.

A review of the application file reveals that applicants' response to the Notice to File Missing Parts of Application mailed October 16, 2000, is of record in the application with a date of receipt by the Office of February 1, 2001. Thus, the Office should not have entered the date that the instant application was complete as April 12, 2001 or assessed a delay of 86 days. Using the correct date of receipt of February 1, 2001, the Office should have assessed a delay of 16 days. Accordingly, the period of reduction for this delay is corrected from 86 days to 16 days.

As to entering a period of reduction for filing of an amendment after the mailing of the notice of allowance, applicants are advised that 37 CFR 1.705(d) provides for a revision of the patent term adjustment when revision is necessitated by events occurring after the mailing of the notice of allowance. 37 CFR 1.705(d) specifically provides that if there is a revision to the patent term adjustment indicated in the notice of allowance, the patent will indicate the revised patent term adjustment. See MPEP 2735. Thus, the reduction for filing of an amendment after the mailing of the notice of allowance will be reflected in the revised patent term adjustment indicated in the patent.

In view thereof, the patent term adjustment at the time of the mailing of the notice of allowance is zero (0) days, including 97 days of applicant delay.

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

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<sup>1</sup> The Issue Fee payment was received in the Office on August 17, 2004.

The application file is being forwarded to the Office of Patent Publication for issuance of the patent.

Telephone inquiries specific to this matter should be directed to Nancy Johnson, Senior Petitions Attorney, at (571) 272-3219.



Karin Ferriter  
Senior Legal Advisor  
Office of Patent Legal Administration  
Office of Deputy Commissioner  
for Patent Examination Policy

Enclosure: Copy of updated PAIR screen